

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

180-Day Exp. Date: March 15, 2008
CDUA OA-3440

February 22, 2008

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: The installation of two trans-Pacific submarine fiber optic cables on state submerged lands at Keawa`ula, Wai`anae, O`ahu, TMK (1) 8-1-01:8.

APPLICANT: AT&T Corporation, Room 3D151F One AT&T Way, Bedminster, NJ 07921

AGENT: Chester Koga, R.M. Towill Coroporation, 420 Waiakamilo Road, Suite 411, Honolulu, HI 96817

LANDOWNER: State of Hawai`i

USE: Approximately 0.3 Acres Landward to the Extent of State Jurisdictional Submerged Land Within a 10-Foot Wide Easement

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE

The proposed project site lies in Keawa`ula, Ka`ena, Wai`anae, O`ahu and adjacent submerged lands within the Resource Subzone of the Conservation District. The landing area is within Ka`ena State Park at the beach commonly known as Yokohamas. The area is utilized for recreational uses such as hiking, swimming, surfing, and sunbathing. Access to the site is via Farrington Highway at the end of the road **(Exhibit 1)**.

Ke`awaula currently serves as a landing site for eight undersea cables. Two were laid in 1963 as part of the COMPAC system. Two more were laid in the same easement in 1983 as part of the ANZCAN system. These have been decommissioned and are no longer in service. There are two cables laid by Pacific Lightnet, and two laid by AT&T in 1991, as authorized by Conservation District Use Permit OA-1417. **(Exhibit 2)**.

The AT&T cables are reaching the end of their service life, and will be decommissioned with the installation of the new cables. The existing cables will be cut, and a several-hundred foot section extending from the shoreline to beyond the break will be removed.

The land area of the project is composed of alluvial deposits and talus material sediment near the base of the mountainside and beach sand. Avifauna that may be in the vicinity include Laysan albatross and wedge-tailed shearwaters. The beach area is predominantly sand with a grassy area makai of Farrington Highway. Common indigenous plants near the landing include kou (*Cordia subcordata*), pōhuehue (*Ipomoea pescaprae*), and `uhaloa (*Waltheria indica*).

Hawaiian marine protected species that may occur in the vicinity of the project include the federally threatened green sea turtle, the federally endangered Hawaiian monk seal and federally the endangered humpback whale. Spinner dolphins may also visit the area.

The project route avoids the Marine Protected Area offshore of Kaena Point as well as the Humpback National Marine Sanctuary. Reef fish and coral communities are lower in abundance and diversity in this area relative to other near shore environments surrounding Oahu. The lack of biological development is likely the result of the geological characteristics combined with exposure to significant seasonal wave action.

Descending into the ocean from Ke`awaula, only the areas close to the beach are expected to have appreciable amounts of sand. The seafloor consists of volcanic sediments, volcanic rocks, coral debris, and some pelagic mud with exposures of lava. The proposed cable would descend down the Oahu island slope, crosses the Wai`anae slump down into contiguous waters outside of the State's jurisdiction.

The installation will be done in conjunction with the installation of a Telstra Telecommunications Cable that was approved by the Board on January 25, 2008 (Conservation District Use Permit OA-3435).

PROPOSED USE

AT&T proposes to connect Hawai'i with California in one direction, and Hawai'i with Guam and Asia in the other as part of the *Asia-America Gateway Cable Installation* project.

Onshore, the cables will be laid in a trench across state lands encumbered to State Parks (Executive Order 3574), and leased to AT&T (Lease No. S-3809).

Offshore the cables will lay on the substrate within an existing easement granted in favor of AT&T. The easement, and thus the area of proposed use, is 12,000 square feet. Based upon a discussion with DLNR's Land Division, OCCL understands that no new lease agreements will be needed for this project.

Exhibit 3 shows the trench section of the cables.

CONSTRUCTION

Construction will take place in April, 2008. Construction activities include trenching on the beach, placing temporary landing targets, and the cable landing process.

Contractors will dig a trench from the existing steel conduit to the ocean. Contractors will excavate sand from an existing 10' wide cable easement on the beach. The trench will run from the water's edge to 20' makai of the highway right-of-way. The existing cables lie at a depth of three to seven feet.

The upper layer of sand will be removed mechanically, with a backhoe. The lower levels will be removed manually.

In the near shore environment, hydro-jets will be used to clear sand from the existing cables. If needed, sandbags will be placed in the water to prevent sand from reentering the open trench. Screens will be used to minimize turbidity. Sand that is removed will be stored onshore for later backfilling.

The cables will be supported by floats, and will be towed ashore by a land-side winch. On shore they will be pulled through steel conduits into a previously installed manhole approximately 150 feet mauka of Farrington Highway. Once the cables are secured the floats will be cut and the cables set in the submarine easement. After installation the beach will be restored to it's pre-existing condition.

The worksite will be cordoned off using safety fencing. Markers and site control on the beach will identify and maintain a safe work area, without the need to close the entire beach area to users. Security shall be provided for equipment that may be staged overnight. Farrington Highway will not be affected by this cable-landing set-up and will therefore remain safely open to public use throughout all operations.

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment - the State: Department of Land and Natural Resources Divisions of: Aquatic Resources, Conservation & Resource Enforcement, Forestry & Wildlife, Oahu District Land, Engineering and Historic Preservation, Parks; Department of Accounting and General Services-Information Communication Services Division; the Department of Health; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; the City: Department of Planning and Permitting and the Wai'anae Neighborhood Board. In addition, this CDUA was also sent to the nearest public library, the Wai'anae Public Library, to make this information readily available to those who may wish to review it.

Comments were received by the following and summarized by Staff as follows:

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Conservation and Resource Management

DOCARE notes that previous work on the site in 1995 had no impact on the environment, natural resources, or community.

Division of Forestry and Wildlife

No Comments

Land Division

No Comments

Division of State Parks

State Parks has no objections to the project as the area already serves as a landing site for submarine optic cables, and that no archaeological artifacts have been found in excavations at the site.

Engineering Division

The Division confirms that the project is located in Flood Insurance Rate Map Zone D, and in seawater. The Flood Insurance Program has no special regulations for developments in Zone D or seawater.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA will rely on the applicant's assurances that the beach will be restored to its pre-construction condition.

OHA requests that the applicant explicitly state that they will cut back rather than uproot the area's vegetation, with special attention paid to indigenous species such as the pōhuehue, kou, and 'uhaloa.

OHA recommends that, in the case human remains or Hawaiian cultural objects are discovered during the course of the project, all work will cease and The State Historic Preservation Division notified.

OHA recommends that the applicant consult with the National Oceanic and Atmospheric Administration to develop measures to mitigate the potential effects on marine life.

OHA requests that the applicant look at removing the two obsolete 1991 cables when they are taken out of service.

OHA notes that the State lands, including the submerged lands, being used for the project are ceded lands, which hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. These lands were illegally taken from the Hawaiian Kingdom after the 1893 overthrow and later transferred ("ceded") by the United States government to the State of Hawaii upon statehood. Today, the State holds these lands in trust for Native Hawaiians and the General Public.

Applicant's Response

The area will be restored to its pre-existing condition to the extent possible. The beach closure itself should only take 24-48 hours.

There are no native plants in the cable installation area. Site preparation activities will consider restoration requirements as stated above.

All work will cease if human remains are discovered, and SHPD will be contacted.

NOAA was advised AT&T of the rules of operation for laying cable.

Two of the cables will be removed from near-shore waters.

The submerged lands in the area are acknowledged as being ceded.

CITY AND COUNTY DEPARTMENT OF PLANNING AND PERMITTING

The Department confirms that the project is exempt from needing a Special Management Area (SMA) permit, but writes that a Shoreline Setback Variance will be required.

WAI'ANAE NEIGHBORHOOD BOARD

The Committee on Planning, Zoning, Housing, and Law Enforcement recommends that the applicant provide a benefits package to the community, park improvements, and \$5000 scholarships to local students at each high school, in return for the Board's approval of the project.

Applicant's Response

The applicant appreciates the Committee's comments, and will forward the requests on to AT&T. The applicant will continue to advise the Board of the project's progress.

ANALYSIS

After reviewing the application, by letter dated September 26, 2007, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-22, P-6, PUBLIC PURPOSE USES, D-2, *Transportation systems, transmission facilities for public utilities, water systems, etc., which are undertaken by non-governmental entities which benefit the public and are consistent with the purpose of the conservation district.* The final authority to grant or deny the permit rests with the Board of Land and Natural Resources (BLNR).
2. Pursuant to §13-5-40 of the HAR, a Public Hearing will be required as the fiber optic line may be utilized for commercial purposes;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact to the environment (FONSI) is anticipated for the proposed project.

Notice of CDUA OA-3435 and the draft Environmental Assessment was published in the October 8, 2007 issue of the *Environmental Notice*. The FONSI was published in the January 8, 2008 issue of the *Environmental Notice*.

A public hearing took place on October 23, 2007 at the Wai'anae Library. Two community members were present. Comments and concerns brought up at this public venue are similar to the Wai'anae Neighborhood Board comments, as discussed in the previous section.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

Staff believes the proposal is consistent with the purpose of the Conservation District as the proposal is within a previously disturbed area within an existing easement. Location of this and other cables promotes the practice of submarine fiber optic co-location landing sites. The Applicant shall observe best management practices for groundwork, marine species observation and shall have an archaeological monitor on site.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to HAR §13-5-22, P-6 PUBLIC PURPOSE USES.

As work shall take place within an existing defined and previously disturbed easement, Staff believes the proper management and use of the easement shall sustain the natural resources of the project area.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled Coastal Zone Management, where applicable.*

The proposed project will be of a short duration and incorporates protective measures to prevent adverse effects to the resources. Staff believes that recreational resources, historical resources, scenic and open space resources, and coastal ecosystems, shall be preserved with the incorporation of the stated best management practices.

A Special Management Area permit is not required.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region. The proposed land use does not change the existing use of the area.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The proposed use does not require new construction of above ground facilities. All landing site infrastructure are present at the site. The project will not create a visual or functional change in the project area.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

As the project is of a short duration, the project area shall be returned to its natural state and mitigation for potential impacts have been formulated. Staff believes the existing physical and environmental aspects of the land shall be preserved.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

There will be no subdivision of land for this proposed project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff believes the proposed project will not be materially detrimental to the public health, safety and welfare. During the construction period, the public shall be restricted from entering the work area to maintain safety. There shall be controlled access to clearly define and limit work areas, which shall protect the public from potential hazards associated with machinery. Staff believes increased telecommunication systems shall improve public health, safety and welfare by providing another venue to channel information for public good.

DISCUSSION

Ke'awaula currently serves as a landing site for eight undersea cables. Two were laid in 1963 as part of the COMPAC system. Two more were laid in the same easement in 1983 as part of the ANZCAN system. These have been decommissioned and are no longer in service. There are two cables laid by Pacific Lightnet, and two laid by AT&T in 1991.

AT&T proposes to connect Hawai'i with California in one direction, and Guam and Asia in the other as part of the *Asia-America Gateway Cable Installation* project.

The existing AT&T cables are reaching the end of their service life, and will be decommissioned with the proposed installation of the new cables. The existing cables will be cut, and a several-hundred foot section extending from the shoreline to beyond the break will be removed.

The cables will lie in a trench in the near-shore environment, and on top of the substrate off-shore.

The landing area is within Ka'ena State Park at the beach commonly known as Yokohamas. The area is utilized for recreational uses such as hiking, swimming, surfing, and sunbathing. Construction activities will close the beach for one to two days, after which the area will be restored as close as possible to it's preexisting condition.

The project proposal lies within an existing disturbed corridor and within an existing easement. Staff does not foresee the project having any significant environmental or cultural impacts.

Construction activities will be done in conjunction with the installation of a Telstra Telecommunications Cable that was approved by the Board on January 25, 2008 (Conservation District Use Permit OA-3435). This should minimize the cumulative impacts of the two projects.

RECOMMENDATION:

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this Conservation District Use Application (CDUA) OA-3440 for the Fiber Optic Cable Installation at Keawa'ula, Wai'anae, Island of O'ahu, portion of

TMK: (1) 8-1-001:008 and offshore submerged State lands subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall obtain appropriate authorization from the Department for the occupancy of State lands;
4. The applicant shall comply with all applicable Department of Health administrative rules;
5. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
6. Any work done or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
7. All mitigation measures set forth in the application materials and in the final environmental assessment for this project are hereby incorporated as conditions of the permit including but not limited to the following:
 - a. Upon construction completion, the Applicant shall restore the project site to its original condition;
 - b. The Applicant shall provide public notification to inform the public of the project;
 - c. The Applicant shall have an Archaeological Monitor on site during any and all excavation work;

- d. The Applicant shall have an onboard observer to implement marine Protected Species Protection Protocols during installation to identify and take action as needed to avoid disturbance of or contact with marine animals;
8. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
9. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
10. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;
11. The applicant shall notify the Office of Conservation and Coastal Lands (OCCL) in writing at least one week prior to the initiation of work within the Conservation District and the cable installation, and upon completion of the project;
12. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
13. Construction activities will be done in conjunction with the cable project authorized by CDUP OA-3435;
14. Other terms and conditions as may be prescribed by the Chairperson; and
15. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thielen, Chairperson
Board of Land and Natural Resources





